

## MINUTES OF THE SENATE TRANSPORTATION &amp; TOURISM COMMITTEE.

The meeting was called to order by Chairperson Senator Ben Vidricksen at 9:10 a.m. on March 21, 2000 in Room 245-N of the Capitol.

All members were present except:

Committee staff present: Hank Avila, Legislative Research Department  
Bruce Kinzie, Revisor of Statutes  
Marian F. Holeman, Secretary

Conferees appearing before the committee: Tom Palace, Exec.Dir. PMCA of KS  
Matthew L. Serrano, Olathe, KS  
Rep. Ted Powers  
Gary Long, Cycle Works, Lawrence, KS

Others attending: See attached list

**HB 2768: Re KCC - Regulation of Motor Carriers**

Members returned to consideration of this bill which had been heard on March 16, 2000. At that time questions were raised which concerned parties have now resolved. They advised there was no need for further amendments to the bill. On March 16 the committee had passed a technical amendment to the bill. Senator Jordan moved to recommend amended HB 2768 favorable for passage. Senator Salmans seconded the motion. Motion carried. Senator Vidricksen will carry the bill.

**HB 2883: Re crimes - theft of motor fuels**

Tom Palace, Executive Director, Petroleum Marketers and Convenience Store Association of Kansas (PMCA of Kansas), requested this anti-crime law. Presently petroleum retailers have no legal avenue to prosecute motor fuel thefts. Statewide losses are approximately \$5,961,555.00 (Attachment 1).

Matthew L. Serrano, Serrano Petroleum & Convenience Co., Inc of Olathe, Kansas, speaking in support of this bill provided background information on the problem; the lack of prevention/enforcement tools, etc. (Attachment 2). The attachment also includes a copy of a decal which they are recommending be affixed to all pumps.

In discussing this bill Senator Tyson expressed concern regarding the wording in New Sec.1.(b), on page 1, line 26. Oftentimes failure to replace or reattach the nozzle and hose is not an intentional act, rather a mistake, or oversight on the part of the customer. It was felt that this language, in combination with New Section 1.(a), would not be a problem. Senator Stephens recommended the bill favorable for passage. Senator Goodwin seconded the motion. Motion carried. Senator Jordan will carry the bill.

**HB 2884: Re motorized bicycles; defining electric assisted bicycles**

Representative Ted Powers presented testimony in support of this bill which would repeal the definition of "low power cycle" and replace it with "electric-assisted bicycle. It would also change the current cylinder capacity, increasing it to not more than 130 ccs. The House amended **HB 2921** into **HB 2884**. Therefore, this bill would further allow persons who have had their driving privileges suspended to be issued a motorized bicycle license only. (No written testimony.)

Gary Long, Cycle Works, Lawrence, Kansas, described the "Whizzer Motor Bike" as a "part of our history." As the bike is now being made, it is an "electric bicycle" and other states have no problem with the power or speed. However, "electric bicycles" are not defined in present Kansas law. He provided materials which further describe these bicycles and the need for this law (Attachment 3).

CONTINUATION SHEET  
MINUTES OF THE SENATE TRANSPORTATION & TOURISM COMMITTEE  
March 21, 2000

Members discussed the bill. Senator Harrington moved to amend **SB-369** as passed by the Senate into **HB 2884**. Senator Goodwin seconded the motion. Motion carried. Senator Harrington moved to recommend **HB 2884**, as amended, favorable for passage. Senator Goodwin seconded the motion. Motion carried. Senator Harrington will carry the bill.

**HB 2883: Re crimes - theft of motor fuel**

After having an opportunity to take a deeper look at the language in this bill, staff pointed out that in order to meet the stated intention of this committee, it did indeed need clarification of the language on page 1, line 26. Insertion of the word "intentionally" failing..... should correct the matter.

Senator Jordan moved to reconsider **HB 2883**. Senator Harrington seconded the motion. Motion carried. Senator Tyson moved to amend **HB 2883** to include the appropriate language on page 1, line 26. Senator Goodwin seconded the motion. Motion carried. Senator Goodwin moved to recommend **HB 2883**, as amended, favorable for passage. Senator Tyson seconded the motion. Motion carried. Senator Jordan will carry the bill.

**Approval of minutes**

Senator Harrington moved to approve the minutes of March 15, 2000 and March 16, 2000 meetings. Senator Stephens seconded the motion. Motion carried.

The meeting adjourned at 10:05 a.m.

The next meeting is scheduled for Wednesday, March 22, 2000

SENATE TRANSPORTATION & TOURISM COMMITTEE

GUEST LIST

DATE: MARCH 21, 2000

NAME	REPRESENTING
Rep Ted Sawyer	89 at desk
GARY LONG	CYCLE WORKS
Rick Scheibe	KDOR Vehicle
Harry T. & Sandy	" "
Dick Bauman	KDOT
Scott Brunner	DOB
Wendy Harms	KPPA
STEVE KEANEY	PMCA
Matt Serrano	Phillips 66-
Tom PALACE	PMCA
Paula Lentz	KCC
Jackie Miller	KCC
Jim Junnell	KGFA / KFCA
Mike Beam	Ks. Luth. Assn.
← Franzie	KCC



Testimony: Senate Transportation Committee  
From: Thomas M. Palace  
Date: March 14, 2000  
RE: House Bill 2883

Mr. Chairman, and members of the Senate Transportation Committee:

My name is Tom Palace, Executive Director of the Petroleum Marketers and Convenience Store Association of Kansas (PMCA of Kansas), a statewide trade association representing over 360 independent Kansas Petroleum companies and convenience stores throughout Kansas.

We appreciate the opportunity to appear before you in support of HB 2883.

PMCA asked for introduction of this bill to offer petroleum retailers a legal avenue to prosecute "drive-offs." Drive-offs occur when a person fills up his/her gasoline tank with fuel and drives off without paying. When this occurs, the store clerk attempts to get a license plate number and phones the local authorities that a theft has taken place. When the police/highway patrol do respond and find the violator that has not paid for the fuel, they will stop the car and ask the driver to return and pay for the fuel. To expand on this further, we have asked several retailers to testify today and they can give you further details relating to drive-offs.

At present there are little or no enforcement powers to stop drive-offs, and we believe HB 2883 will act as a deterrent, warning would be offenders that if they drive-off without paying for their fuel, they could lose their driving privileges. Passage of this bill will allow retailers to post signs, at the retailer's expense, that state "drive-offs will not be tolerated and anyone caught intentionally driving away without paying for fuel will be prosecuted." The penalty for the first conviction is a Class A nonperson misdemeanor; the second conviction -driver's license privileges are suspended for 6 months and for a third conviction, driver's license privileges are suspended for one year. In addition to the suspended license, a reinstatement fee of \$100 shall be paid to the division of motor vehicles to pay for the administrative costs.

As in any retail industry, theft is addressed daily by management. Theft in many instances has become a "cost of doing business." People don't realize that theft becomes an overhead expense and as such, is reflected in the price of the item purchased. Loss leads to higher prices. Gasoline is no different from other consumer products.

Twelve states have some type of drive-off law in place. This bill mirrors a Mississippi law that was passed in 1999. Georgia, Colorado, and Oklahoma have similar laws. Missouri and

Petroleum Marketers and Convenience      SENATE TRANSPORTATION & TOURISM  
201 NW Highway 24 • Suite 3      COMMITTEE -DATE: 3-21-00  
Topeka, KS 66608      ATTACHMENT: 1  
785-233-9655      Fax: 785-354-4374

Iowa have introduced legislation similar to HB 2883.

In an effort to refute the point that a \$10 drive-off is no big deal, PMCA conducted a survey and concluded the following results:

1. 31 companies responded out of 260 surveys sent. These companies have 98 locations or 3.16 stores per company.
2. The average amount of drive off losses per store is \$225 per month or \$2709 per year.
3. There are approximately 2200 retail locations in Kansas with total drive-off losses of \$5,961,555.

HB 2883 will not stop all drive-offs from occurring. It does however, give retailers an opportunity to fight back against theft at the pump and it hits people where it hurts, taking away driving privileges. Granted, 95% of the motoring public are good, honest people. HB 2883 is not intended to be used when someone makes an honest mistake. It is to be used when someone intentionally steals gas.

Mr. Chairman and members of the committee, I appreciate the opportunity to appear before you today and urge your support of HB 2883. I will stand for questions.



**Serrano Petroleum & Convenience Co. Inc.**  
**Olathe Phillips 66/Olathe South Citgo**

1805 South Ridgeview  
Olathe, KS 66062

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Phone (913) 829-0616  
Fax (913) 829-5791

Testimony: Senate Transportation Committee  
From: Matthew L. Serrano  
Date: March 21, 2000  
Re: House Bill 2883

Dear Senator Vidricksen and Senators:

My name is Matthew L. Serrano, owner of two convenience store gas stations located in the Olathe Kansas area. Both stations are located on 151st street. One is branded Phillips 66 and the other is a Citgo branded station. The area is a developing one. The clientele is mostly all middle class. Both stores are located close to the Olathe South High School.

The reason for my joining you here today is to discuss the growing problem of drive offs at my stations. Although my situation may not be the same as other owners it's result is the same. Money lost. Typically for my stores the situation most likely for a drive off is during busy times of the day. All the pumps are being used and while checking customers out at the cash register a person may pull his/her car away from the pumps, walk inside and buy a pop and candy bar and not say anything about having gas. Another way it can happen is for a person to simply drive away slowly and pretend to have forgotten about coming inside to pay. The excuses range from pretty crafty to down right stupid. Another way drive offs occur is a person pulls up to the pump, fills up, gets in the car and peels out as fast as he/she possibly can. I could go on and on about the ways but I think you probably get the idea.

Normally when a situation like this occurs we can only hope that we are lucky enough to have gotten a license plate number so that we can call the police and file a report. If the person lives within the city limits of Olathe the Olathe police will normally drop by their house and leave a note telling them that they forgot to pay for their gas. If the person is out of the city limits or from another state it usually means a loss that will not be collected.

The average amount of gas drive offs per month is \$100 per each one of my stores. While this figure may seem like a small amount for a business to incur, it is a total of \$2400 per year. This is money right out of my pocket. I have fellow business owners that operate stores in demographically different locations that are triple and four times higher than my losses. Ladies/Gentlemen this is outrageous. People that drive off need to be held accountable for their actions!

I recommend that motorists who drive off should have their licenses suspended in order to deter this behavior. I believe that while there are probably cases where people are sometimes careless or may honestly forget to pay, a vast majority are very aware of what they are doing and will continue to do so if there is not a consequence for their theft. Understanding that there are mishaps I recommend that a first time offense and conviction is a Class A nonperson misdemeanor. The second time and beyond should result in a suspension of the drivers license on an escalating scale based on the number of offenses. I also believe that people should be made aware of these penalties through the usage of decals posted at the fueling site.

Ladies/Gentlemen, please, I urge you to help me in my quest to deter motorists from continuing in this thievery. With margins on gasoline as low as a few pennies a gallon it takes a lot of gas sales to make up for a \$20-\$30 gas drive off. (Example: At a margin of 4 cents a gallon it takes 500 gallons of sales for me to make up a \$20.00 gas drive off!)

SENATE TRANSPORTATION & TOURISM  
COMMITTEE -DATE: 3-21-2000  
ATTACHMENT: 2

Senator, while I understand that HB 2883 will not completely stop all gas drive offs from happening, I do believe that it is a step in the right direction to make people aware of the seriousness of the offense.

Senator, I appreciate the opportunity to appear before you today and urge your support of HB 2883. I will stand for question.

Sincerely,

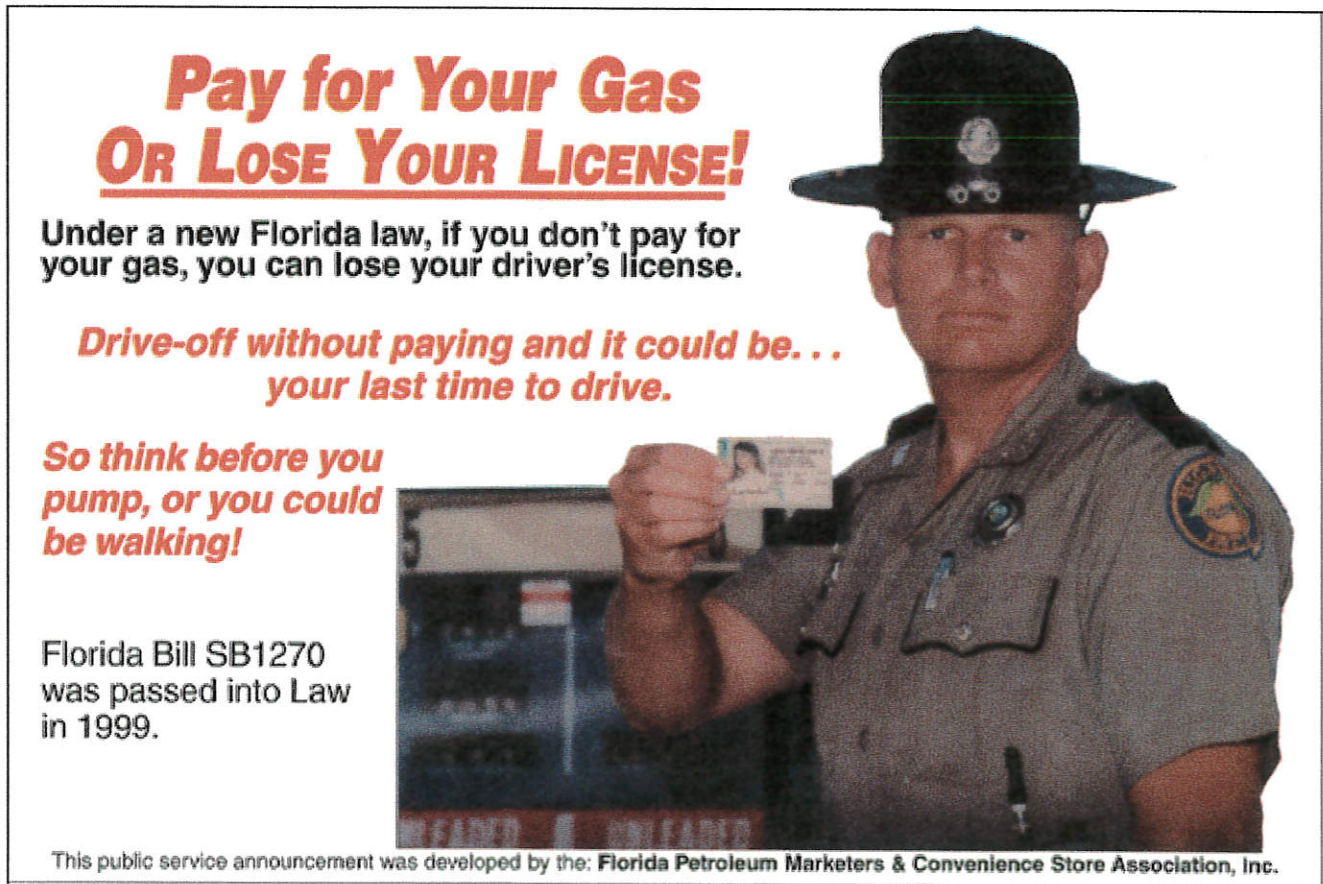
Matthew L. Serrano  
President

**From:** Keith Sorrells <ksorrells@arkval.com>  
**To:** 'opma-oacs@worldnet.att.net' <opma-oacs@worldnet.att.net>  
**Date:** Tuesday, November 23, 1999 5:19 PM  
**Subject:** Florida drive off pump decal

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Vance, should be a copy of this decal per the attachment to this e-mail. Hopefully my computer skills make this work. If not give me a call tomorrow. THANKS KEITH

Picture Attachments:



***Pay for Your Gas  
OR LOSE YOUR LICENSE!***

**Under a new Florida law, if you don't pay for your gas, you can lose your driver's license.**

***Drive-off without paying and it could be...  
your last time to drive.***

***So think before you  
pump, or you could  
be walking!***

Florida Bill SB1270  
was passed into Law  
in 1999.

This public service announcement was developed by the: Florida Petroleum Marketers & Convenience Store Association, Inc.

File: FL Law.jpeg





March 9, 2000

Senator Ben Vidricksen  
State of Kansas  
State Capitol Room No. 143 N  
Topeka, KS 66612

Dear Senator Vidricksen:

On behalf of our Kansas dealers and thousands of Kansas Whizzer fans we would like to ask your assistance with the re-classification of our product as a "motorized bicycle".

Present Kansas regulations specify that a "motorized bicycle" be as follows:

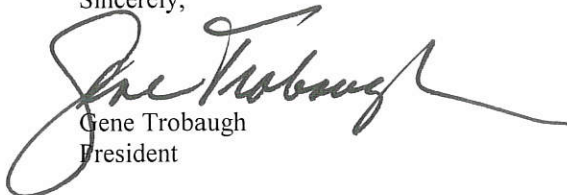
Kansas Regulations	Whizzer Specifications*
<i>Not more than 50cc engine capacity</i>	<b>123.cc engine capacity</b>
<i>No more than 3.5 horsepower</i>	<u>1.5 horsepower</u>
<i>Maximum speed 30 mph</i>	<u>25 mph maximum speed</u>

Kansas State Motor Vehicle officials and the Highway Patrol advised that due to the engine capacity of our product it must be classified as a motorcycle. We had asked that it be considered a *MOPED* in as much as our performance meets the spirit and the intent of Kansas regulation. They advised they must follow the letter of the law. Therefore we respectfully request our product be included as a motorized bicycle due to our actual performance and specifications.

Our product is not targeted to young riders and we are not interested in that market. Our product is for the "nostalgia" market, people who remember the Whizzer from the 40s and 50s, that want to relive that special time again. Since our product is a true "moped" in all respects of performance and operation we hope you can support our request for classification as a motorized bicycle. The reason our bike has a 123cc engine is due to the technology of the time, 1939, and the performance requirement of low speed torque. We have a large flywheel for start-up because we have no transmission, but instead a direct belt drive system just like the old original model.

Whizzer is truly a "motorized-bicycle" in every sense of the words. We'll be happy to supply any additional information or assistance you may require. Thank you for your consideration.

Sincerely,

  
Gene Trobaugh  
President

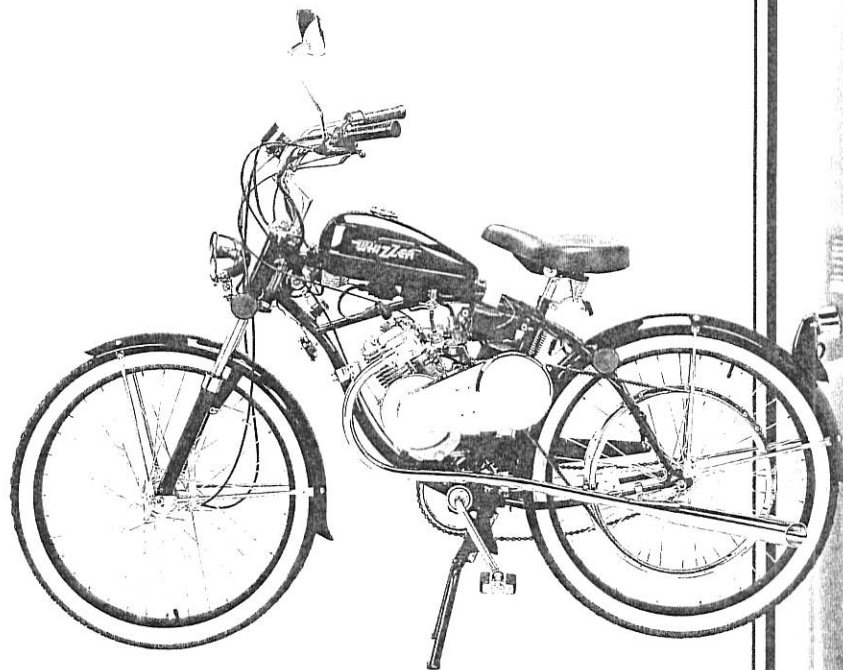
\*meets US DOT regulation and is classified as a *Motor-Driven-Cycle*.

Encl. Whizzer brochure/specification sheet

SENATE TRANSPORTATION & TOURISM  
COMMITTEE - DATE: 3-21-00  
ATTACHMENT: 3

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# WHIZZER<sup>®</sup> MOTORBIKE



*Motorbike  
fun is  
back again!*



- \* Specifications
- \* Accessories
- \* Dealer
- \* Financing
- \* Contact Us

**SIZE**

26" standard adult bicycle.  
 Overall length - 73"  
 Wheel base - 44.5"  
 Width - 29" (at handlebars)  
 Height - 46" (at handlebars)  
 Seat Height - 33.5" (lowest)  
 Dry Weight - 97 lbs.

**COLOR** Black (only)

**ENGINE**

Aluminum 123 cc 4 stroke Single Cylinder  
 Side-valve  
 1.5 Horse Power  
 Cylinder steel sleeve  
 CDI electronic ignition  
 12 volt electrical system  
 Fuel Tank - 1.2 gal.  
 120 miles per gallon  
 Oil capacity - 8 oz.

**DRIVE SYSTEM**

Belt drive, primary with slip clutch  
 Bicycle chain and pedal system

**FRAME**

Heavy duty steel tube  
 Aluminum alloy wheels  
 12 gauge stainless steel spokes  
 Hydraulic telescopic front forks 3.5" travel

**WARRANTY**

1 year factory warranty no mileage limit  
 Dealer service

Maximum top speed 25 mph Rider only no passenger.

Legal for Street riding. Most states classify as a moped and can be registered, licensed, titled.

Made in Taiwan

Ride One and You'll Buy One

Copyright © 1998 Whizzer Motorbike Company  
2051 E. Cerritos Ave. Suite C Anaheim, California 92806

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# KANSAS HIGHWAY PATROL

*Service—Courtesy—Protection*

Bill Graves  
Governor



Col. Donald W. Brownlee  
Superintendent

October 12, 1999

Marge Bailey  
Kansas Department of Revenue  
Docking State Office Building  
915 Harrison  
Topeka, KS 66612-1588

Dear Ms. Bailey:

Recently your agency and the Kansas Highway Patrol have entertained a question as to the proper way to register a vehicle called the Whizzer Motorbike. It is our opinion the Whizzer should be registered as a motorcycle.

For registration purposes (K.S.A. 8-127) it is important to distinguish between a motorcycle (K.S.A. 1998 Supp. 8-126(d)) and a motorized bicycle (K.S.A. 1998 Supp. 8-126(aa)). A vehicle, to be categorized a motorized bicycle, must have a cylinder capacity of not more than 50 cubic centimeters. The specifications of the Whizzer state it has a cylinder capacity of 120 cubic centimeters. Therefore, the Whizzer cannot be categorized a motorized bicycle and falls into the broader motorcycle category.

If we encounter such a vehicle we will take enforcement action consistent with this opinion. If you have any questions or concerns please contact me.

Very truly yours,

A handwritten signature in cursive script that reads "Brian L. Leininger".

Brian L. Leininger  
Legal Counsel

cc: Mr. Gary Long

122 SW SEVENTH STREET  
TOPEKA, KANSAS 66603-3847  
(785) 296-6800 FAX (785) 296-5956

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